

### III. Remarks

#### A. Status of the Application

Claims 2, 9-13, 15, 16, 26, 27, 30-33, and 35-40 are pending. Claims 1-19 and 26-34 were previously pending. Claim 1, 3-8, 14, 17-19, 28, 29, and 34 are canceled by the present paper without prejudice to or disclaimer of the subject matter therein. Claims 2, 9-13, 15, 16, and 26 have been amended. New claims 35-40 are added by the present paper. Reconsideration of the application is respectfully requested in light of the above amendments and the following remarks.

#### B. §103 Rejections

##### 1. The Pope, Larsen, Buttner-Janz, and Suddaby Patents

All of the previously pending claims were rejected under 35 U.S.C. §103 over various combinations of U.S. Patent No. 6,290,726 to Pope et al. (“the Pope patent”), U.S. Patent No. 5,782,832 to Larsen et al. (“the Larsen patent”), U.S. Patent No. 5,401,269 to Buttner-Janz et al. (“the Buttner-Janz patent”), and U.S. Patent No. 6,395,034 to Suddaby (“the Suddaby patent”). It is clear that these references are insufficient to establish a *prima facie* case of obviousness with respect to the claims as amended by this paper.

For example, independent claim 2 requires:

“a first component having an articular surface for articulated sliding movement with the shell, the first component formed from a wear resistant first material, the first material comprising a polymer having a first hardness; and

a second component formed from a resilient second material for absorbing compressive and shear forces imparted upon the implantable endoprosthesis, the second material comprising a polymer having a second hardness softer than the first hardness, the second hardness being approximately 80 Shore A;

wherein the second component is disposed between the first component and a third component also formed from the first material, the third component having an articular surface for articulated sliding movement with the shell;

wherein the body member is adapted to articulate with respect to the shell such that one or more surfaces of the shell come into sliding contact with the articular surfaces of the first and third components during articulation.”

Claims 9-13, 15, 16, and 35-39 depend from and further limit claim 2.

Further, independent claim 26 requires:

“a first portion having a first convex surface configured to articulate with a first concave surface of the shell structure, the first portion formed from a first wear-resistant material having a first hardness, the first portion having a thickness between about 0.25 mm and about 0.75 mm;

a second portion having a second convex surface configured to articulate with a second concave surface of the shell structure, the second portion formed from a second wear-resistant material having a second hardness, the second portion having a thickness between about 0.25 mm and about 0.75 mm; and

a third portion positioned at least partially between the first and second portions to avoid contact with the shell structure, the third portion formed from a resilient material having a third hardness, the third harness being softer than the first and second hardesses and being between about 75 Shore A and 85 Shore A, the resilient material for absorbing compressive and shear forces imparted upon the body member, the resilient material having a thickness greater than the thicknesses of the first and second portions;

wherein at least the first wear-resistant material and the resilient material comprise a polycarbonate polyurethane.”

Claims 27 and 30-33 depend from and further limit claim 26.

Finally, independent claim 40 requires:

“a first portion having a first convex surface configured to articulate with a first concave surface of the shell structure and a plurality of generally cylindrical sleeves extending opposite the first convex surface, the first portion formed from a first wear-resistant material having a first hardness;

a second portion having a second convex surface configured to articulate with a second concave surface of the shell structure and a plurality of generally cylindrical posts extending opposite the second convex surface and slidably engaged with the plurality of sleeves of the first portion to limit lateral movement

between the first and second portions while allowing longitudinal movement between the first and second portions, the second portion formed from a second wear-resistant material having a second hardness; and

    a third portion positioned at least partially between the first and second portions such that the third portion does not contact the shell structure, the third portion including a plurality of openings for receiving the plurality of sleeves and posts of the first and second portions, the third portion formed from a resilient material having a third hardness for absorbing compressive and shear forces imparted upon the body member, the third hardness being softer than the first and second hardnesses;

    wherein at least the first wear-resistant material, second wear-resistant material, and the resilient material each comprise a polycarbonate polyurethane;

    wherein the first and second components each include a recess for receiving one or more projections of the shell structure to limit lateral movement of the body member with respect to the shell structure.”

The cited references, even when combined, simply do not disclose or suggest the limitations as recited in these claims. Accordingly, all of the pending claims appear to be patentable over the cited references.

#### IV. Conclusion

It is believed that claims 2, 9-13, 15, 16, 26, 27, 30-33, and 35-40 are in condition for allowance. Thus, an indication of allowance of the claims is respectfully requested.

Should the Examiner deem that an interview with Applicant's undersigned attorney would expedite consideration of the application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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